

# ORIGINAL

## COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON \_\_\_\_\_, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

COUNTY OF EL DORADO, a political subdivision of the State of California, referred to herein as "COUNTY".

### RECITALS

1. STATE and COUNTY, herein referred to as "PARTIES", pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) right of way (R/W) within COUNTY's jurisdictional limits.
2. PARTIES intend to cooperate to construct High Occupancy Vehicle (HOV) and bus lanes in the median of United States Highway 50 (US 50) from west of Bass Lake Road to Ponderosa Road in COUNTY, referred to herein as "PHASE 2 PROJECT".
3. COUNTY entered into a separate Memorandum of Understanding and Intergovernmental Agreement with the Shingle Springs Band of Miwok Indians (Tribal Agreement) for the Tribe to pay COUNTY \$5,200,000 annually for 20 years, a portion of which will be used by COUNTY to reimburse their PHASE 2 PROJECT costs, beginning on the 365th day after the Tribe's gaming project is open to the public. COUNTY received the first Tribal Agreement payment in December 2009 (hereinafter referred to as "TRIBAL FUNDS").
4. PARTIES agree that STATE will perform all plans, specifications and estimates (PS&E) and R/W activities, together herein referred to as "WORK", and that COUNTY will reimburse STATE one hundred percent (100%) of WORK costs from February 2, 2007, as detailed on Exhibit A, attached to and made a part of this Agreement. COUNTY intends to use TRIBAL FUNDS as the sole source of funds for all WORK costs associated with this agreement.
5. STATE completed the project approval and environmental documentation (PA&ED) for PHASE 2 PROJECT, as part of PA&ED for the ultimate US 50/COUNTY HOV project, in June of 2002. STATE is the California Environmental Quality Act (CEQA) Lead Agency for said ultimate HOV project.
6. PHASE 2 PROJECT construction shall be the subject of a future amendment or separate agreement.
7. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PHASE 2 PROJECT.

8. PARTIES mutually intend to specify herein the terms and conditions under which WORK is to be accomplished and financed.

### SECTION I

#### STATE AGREES:

1. To perform all activities necessary to complete WORK in accordance with all applicable Federal and State laws, regulations, procedures and standards and to submit WORK for COUNTY's review, comment, and concurrence at appropriate sequential stages of development.
2. To submit to COUNTY a detailed PHASE 2 PROJECT PS&E for review and acceptance prior to preparation of contract documents. A Civil Engineer registered in the State of California shall sign PHASE 2 PROJECT PS&E. STATE agrees that any landscape work in the PS&E shall be prepared and signed by a licensed California Landscape Architect.
3. Upon execution of this Agreement, to submit an invoice to COUNTY for the full amount of accrued WORK costs, plus the amount of \$100,000, which amount represents two month's estimated PS&E (\$70,000), one month's estimated R/W capital costs (\$10,000), and R/W (\$20,000) support costs.
4. To thereafter submit monthly invoices, in arrears, to COUNTY for the current actual WORK costs not to exceed \$4,600,000.00 as shown in Exhibit A.
5. Upon completion of WORK and all work incidental thereto, to furnish COUNTY with a detailed statement of WORK costs to be borne by COUNTY. To thereafter refund to COUNTY, promptly after completion of STATE's final accounting of said WORK costs, any amount of COUNTY's deposits remaining after said costs to be borne by COUNTY have been deducted, or to bill COUNTY for any additional amount required to complete COUNTY's financial obligations assumed pursuant to this Agreement.
6. To certify legal and physical control of R/W acquired in accordance with applicable State and Federal laws and regulations, prior to bid advertisement of PHASE 2 PROJECT construction contract.
7. At no cost to COUNTY, issue the necessary encroachment permits in preparation for Ready to List (RTL) activities.
8. Personnel who are employees or consultants of STATE and who are qualified to review environmental documentation, including investigative studies and technical environmental reports shall be made available to COUNTY, at no cost to COUNTY, through completion of PHASE 2 PROJECT to discuss problems which may arise during PS&E or R/W and/or to make revisions to environmental documentation.
9. To acquire all necessary R/W in accordance with all applicable STATE and federal laws and

regulations STATE policies and procedures such that the completed work is acceptable for incorporation into SHS R/W.

10. If the expenses for PHASE 2 PROJECT R/W acquisition and other R/W activities exceed the amounts shown on Exhibit A, STATE shall stop work on R/W acquisitions and other R/W activities until additional funds are procured and made available and this Agreement is amended accordingly.
11. To identify and locate all utility facilities within PROJECT area as part of STATE's PHASE 2 PROJECT design responsibility. All utility facilities not relocated or removed in advance of construction shall be identified on PHASE 2 PROJECT PS&E for protection, relocation or removal.
12. To furnish evidence to COUNTY, in a form acceptable to COUNTY, that arrangements have been made for the protection, or removal of all conflicting facilities within the SHS R/W and that such work will be completed prior to the award of the contract to construct PHASE 2 PROJECT or as covered in the PS&E for said contract. This evidence shall include a reference to all required SHS encroachment permits.
13. Any utility owner or its contractors performing protection or relocation work within the COUNTY R/W must obtain an encroachment permit from COUNTY prior to the performance of any said work.
14. All survey work shall conform to the methods, procedures, and requirements of STATE's Surveys Manual and STATE's Staking Information Booklet.
15. To submit to COUNTY a list of Caltrans horizontal and vertical control monuments, which will be used to control surveying on PHASE 2 PROJECT.
16. To provide an electronic copy of the Final R/W Record Maps and Record of Survey with a hard copy in Microstation format, including an electronic copy of the file, two reproducible copies and a color bond copy for each final R/W Map.
17. To cause the permanent monumentation of the location of all R/W acquisitions and re-monumentation of any control or land net monuments destroyed during construction. Land net monuments within the State R/W need not be re-monumented, but must be referenced. All of the above referenced permanent monumentation and re-monumentation, and the existing land net, are to be shown on a Record of Survey filed with the County Surveyor in conformance with the California Land Surveyors Act.

## **SECTION II**

### **COUNTY AGREES:**

1. To pay one hundred percent (100%) of STATE's actual WORK costs from February 2, 2007, up to a maximum amount of \$4,600,000.00 as shown on Exhibit A, in accordance with the terms of this Agreement.
2. To pay STATE's invoice for accrued WORK costs, plus two month's estimated PS&E (\$70,000), one month's estimated R/W capital costs (\$10,000), and R/W support (\$20,000) costs, within thirty (30) days of receipt of invoice from STATE.
3. To thereafter pay STATE's monthly invoices for the current actual WORK costs within thirty (30) days of receipt.
4. To pay STATE's invoice, if any, issued upon STATE's final accounting of WORK costs within thirty (30) days of receipt.
5. At no cost to STATE, to provide prompt review and concurrence or approvals, as appropriate, of submittals by STATE, and to coordinate in timely processing of WORK.

## **SECTION III**

### **IT IS MUTUALLY AGREED:**

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. Notwithstanding Articles 4 and 6 of this Section III, in the event that Article 5 of this Section III occurs, COUNTY agrees, as a PHASE 2 PROJECT expense, to ensure all commitments and conditions set forth in the environmental documentation, permits, agreements or approvals that are required to keep PHASE 2 PROJECT in environmental compliance are implemented until additional funds are procured for PHASE 2 PROJECT and this Agreement is amended accordingly.
3. STATE agrees to obtain, as a WORK cost, all necessary PHASE 2 PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless PARTIES otherwise mutually agree in writing that COUNTY is responsible for obtaining said PHASE 2 PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies. In that case, those said costs shall be COUNTY costs.
4. STATE has no obligation to perform any further WORK should the funds to perform WORK become and remain unavailable or unpaid at any point of time during the life of this Agreement.

5. STATE shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental document(s), permit(s), agreement(s), and/or environmental approvals for WORK. The costs of said compliance and implementation shall be a WORK cost.
6. All applicable laws, rules and policies related to the use of Federal funds and State fuel tax funds shall apply notwithstanding other provisions of this Agreement.
7. If any existing utility facilities conflict with PHASE 2 PROJECT construction, pursuant to STATE's policies and/or contracts, STATE shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal. Any costs associated with such timely accommodation, protection, relocation, or removal shall be a PHASE 2 PROJECT cost.
8. The costs for WORK's positive identification and location, protection, relocation, or removal of utility facilities within STATE'S existing R/W shall be determined in accordance with Federal and California laws and regulations, and STATE's policies, procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts. There is no proposed STATE R/W as a part of this project.
9. The party that discovers hazardous material (HM) will immediately notify the other party to this Agreement.
10. HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PHASE 2 PROJECT or not.
11. HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PHASE 2 PROJECT.
12. STATE, independent of PHASE 2 PROJECT, is responsible for any HM-1 found within existing SHS R/W. STATE will undertake HM-1 management activities with minimum impact to PHASE 2 PROJECT schedule and will pay all costs for HM-1 management activities.
13. COUNTY, independent of PHASE 2 PROJECT, is responsible for any HM-1 found outside existing SHS R/W. COUNTY will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to PHASE 2 PROJECT schedule and will pay all costs for HM-1 management activities.
14. If HM-2 is found within the limits of PHASE 2 PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of PHASE 2 PROJECT construction contract

will be responsible for HM-2 management activities. Any management activity cost related to HM-2 is a PHASE 2 PROJECT construction cost.

15. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
16. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
17. A separate Cooperative Agreement or Agreements will be required to cover responsibilities and funding for PHASE 2 PROJECT construction.
18. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of SHS and public facilities different from the standard of care imposed by law.
19. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction conferred upon COUNTY under this Agreement. It is understood and agreed that COUNTY will fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by COUNTY under this Agreement.
20. Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that STATE will fully defend, indemnify and save harmless COUNTY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
21. If there is a legal challenge to the environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), and/or approvals for PHASE 2 PROJECT, all legal costs associated with those said legal challenges shall be a STATE cost.
22. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for

PHASE 2 PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). PARTIES agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.

23. If, during, preparation of PHASE 2 PROJECT PS&E or performance of PHASE 2 PROJECT R/W activities, new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA and if applicable, NEPA, this Agreement will be amended to include completion of those additional tasks as a PHASE 2 PROJECT cost.
24. No alteration or variation of the terms of this Agreement shall be valid unless made in an amendment to this Agreement and signed by PARTIES hereto and no oral understanding or agreement not incorporated herein shall be binding on PARTIES hereto.
25. If termination of this Agreement is by mutual consent, all WORK costs incurred by STATE to the date of termination shall be reimbursed to STATE by COUNTY.
26. COUNTY Contract Administrator: Matthew D. Smeltzer, Deputy Director of Engineering, Department of Transportation, or his successor.
27. This Agreement shall terminate upon satisfactory completion of and the delivery of required PHASE 2 PROJECT construction documents to COUNTY, or on December 31, 2014, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction related or other claims arising out of PHASE 2 PROJECT be asserted against one of the parties, PARTIES agree to extend the fixed termination date of this Agreement, until such time as the construction related or other claims are settled, dismissed or paid.

**STATE OF CALIFORNIA**  
**Department Of Transportation**

**COUNTY OF EL DORADO**

By: \_\_\_\_\_  
GARY S. SIDHU, Deputy District Director  
District 3 Program Project Management

By: \_\_\_\_\_  
Board of Supervisors


By: \_\_\_\_\_  
Attorney, Department of Transportation

Attest: \_\_\_\_\_  
SUZANNE ALLEN DE SANCHEZ  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
District Project Control Officer

Requesting Department Concurrence:

By: \_\_\_\_\_  
Accounting Administrator

By:  \_\_\_\_\_  
JAMES W. WARE, P. E.  
Director of Transportation



**EXHIBIT A**

**COST ESTIMATE**

<u>Phase</u>	<u>Performed By:</u>	<u>Funded By:</u>
PS&E	STATE	<u>*COUNTY</u> \$4,350,000
R/W Capital	STATE	\$50,000
R/W Support	STATE	\$200,000
<b>TOTAL</b>		<b>\$4,600,000</b>

**\* Tribal Funds.**